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IN THE

Supreme Court of the United States

No. 577

MRS. LYDIA SANDOZ HASSAN, Administratrix
of the Estate of Owen J. Sandoz,
Petitioner,

versus

A. M. LANDRY & SON, INC. and
THE TRAVELERS INS. CO.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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NO.

MRS. LYDIA SANDOZ HASSAN, Administratrix
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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

To The Honorables The Chief Justice and The Associate Justices of The Supreme Court of The United States:

Mrs. Lydia Sandoz Hassan herewith respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, rendered in this cause on July 26, 1963 and issued as mandate on September 24, 1963, affirming a summary judgment dismissing petitioner's claims for damages against the respondent herein.

OPINIONS BELOW

The District Court did not render an opinion; the minute entry of its judgment is copied in full in Appendix A. The opinion of the Court of Appeals for the Fifth Circuit, comprising Appendix B, is reported in 321 F. 2d 570 (5th Cir. 1963).

JURISDICTION

This matter involves the interpretation and application of the Jones Act, 28 U.S.C. §688. The judgment of the Court of Appeals for the Fifth Circuit was entered on July 26, 1963. The jurisdiction of this Honorable Court is envoked under Section 1254 (1) of Title 28 of the United States Code.

THE QUESTION PRESENTED

Petitioner's application for certiorari presents a single question of law:

May a party who is not the duly authorized personal representative of a deceased employee settle and compromise a claim for the employee's wrongful death under the Jones Act and grant a valid release of all liability arising from the wrongful death?

STATEMENT OF THE CASE

Owen J. Sandoz, the decedent herein, was fatally injured on June 1, 1958, when a helicopter which was transporting him to work in offshore drilling operations

crashed in the Gulf of Mexico. The mother of the decedent, the petitioner herein, was appointed administratrix and as personal representative of his estate brought suit under the Jones Act for the wrongful death of her son.

The respondent herein, the employer of the decedent, moved for a summary judgment on the ground that the decedent's "common law wife," individually and as tutrix of the decedent's children, had settled and compromised all claims for wrongful death and had given a full and valid release to the respondents.

The District Court granted the respondent's motion and dismissed the petitioner's suit. The Court of Appeals for the Fifth Circuit affirmed the Judgment of the lower court on July 26, 1963.

For the reasons hereinafter set forth, petitioner applies for a writ of certiorari to review the judgment and opinion below to the end that petitioner's cause of action for damages may be reinstated and remanded to the District Court for trial on its merits.

REASONS FOR GRANTING THE WRIT

In the instant case the Court of Appeals for the Fifth Circuit has allowed a party other than the duly appointed personal representative of a deceased employee to compromise and settle a claim for wrongful death arising under the Jones Act and to release all liability arising as a result of the wrongful death.

This holding, we submit, is in direct conflict with both

the letter and spirit of the Jones Act; and it creates uncertainty as to who may grant a valid release and inhibits the settlement and compromise of such claims under the Jones Act as well as other federal acts which use similar terminology.

Lower Court's Opinion Conflicts with the Letter and Spirit of the Jones Act

The Jones Act clearly and expressly designates the proper party to bring an action for the wrongful death of a seaman. This Act provides that "in case of the death of any seaman as a result of any such personal injury the *personal representative* of such seaman may maintain an action for damages at law with the right of trial by jury". 46 U.S.C. § 688. The courts have interpreted the phrase "personal representative" to mean an administrator. *Marshall v. N.Y. Central*, 218 F. 2d 900, 906 (1955); *O'Neill v. Cunard White Star Ltd.*, 69 F. Supp. 943 (1946).

No other party is designated by the Jones Act to bring an action for the wrongful death of a seaman. Only the personal representative, the administrator, of the decedent's estate is named by the Act and the Courts have held that only he can bring an action for wrongful death under the Jones Act. No other party, not even the beneficiaries of the deceased, may bring such an action. *Fornaris v. American Surety Co. of New York*, 183 F. Supp. 339 (1960).

Inasmuch as the personal representative of the estate is the only party who can bring a suit under the Jones Act for wrongful death, he should be the only party competent and capable of settling such a suit and granting a release for

claims arising as a result of a wrongful death. If a party who is not competent to file a claim is permitted to settle the claim and terminate the matter, the authority of the administrator to file and prosecute such a suit would be debilitated and undermined if not completely destroyed. And the provision of the Jones Act designating the personal representative as the only party competent to file a claim for wrongful death would be rendered meaningless.

This result could have a direct effect on the rights of the decedent's beneficiaries, the protection of whom was a major objective (behind the enactment) of the Jones Act. The administratrix was appointed by a competent court; she is a trustee of *all* the beneficiaries and, as such, is held to a high standard of loyalty and trust. See *Rowston, administratrix v. Norton Co.*, 180 F. Supp. 803 (1960). For these reasons she is the only party designated by the Act to file suit. For the same reasons she should be the only party capable of settling a claim under this Act. As a result of the decision in the instant case, however, anyone who has an interest in the matter, even though this party is not competent to file suit, and even though he is not in a fiduciary relationship to all the beneficiaries, may terminate the matter and release all claims arising from the wrongful death. Such a result is in direct conflict with the letter and spirit of the Jones Act.

The result below, summarily holding the release valid, may cause pretermission of other important law and fact questions.[1]

The Importance of the Question Presented

The question of who may settle a claim under the Jones Act for wrongful death and grant releases for this claim is of grave importance. The instant case, in allowing someone other than the personal representative of the estate to accomplish this function, creates uncertainty as to who may give a valid release.

---

[1]The party in the instant case who settled the Jones Act claims for wrongful death and granted releases for these claims was the "common law" wife of the decedent. The lower court takes the position that this party is a beneficiary under the Jones Act: "If the plaintiff as administratrix is entitled to recover under the Jones Act her recovery would not be on behalf of the estate but solely as trustee for the designated survivors, that is in this case, the *widow* and minor children". Hassan v. A. M. Landry & Son, Inc. 321 F. 2d 570, 571 (5th Cir. 1963) (Emphasis added). Thus the court below has interpreted the word "widow" in the Act to encompass a "common law wife". If the law of Louisiana does not recognize a common law wife as a wife, then does the Court below in its interpretation of the term "widow" in the Jones Act adhere to the law of Louisiana? La. Rev. Stat. of 1950, 14:79.1 is such determination independently of the domestic relations law of a state, in interpretating the Jones Act, in opposition to the recent decision of *Bell v. Tug Shrike*, 215 F. Supp. 377 (E.D. Virg. 1963), wherein a Federal court in Virginia held that in interpreting the word "widow" in the Jones Act "the federal courts are to look to the domestic relations laws of the states"? Is this a conflict between courts in different circuits? Can one person's rights be terminated through a release granted by another who is not vested with the cause of action and who may have no interest therein?

Can an administratrix grant a valid release? Can a beneficiary accomplish this same fete? Can a party who is neither an administratrix nor a beneficiary grant a valid release? All of these questions are generated by the opinion of the lower court in the instant case. Their presence enshrouds the whole area of settlement with a thick fog of uncertainty. Such an atmosphere can only inhibit the progress of litigation under the Jones Act as well as other federal acts which use similar terminology and can stifle settlements. Such a result will cause inequities for the litigants and crowded dockets for the courts. Since this Honorable Court has not spoken on this subject it is in the public interest that the problems presented by this application be resolved.

CONCLUSION

For the foregoing reasons, petitioner Mrs. Lydia Sandoz Hassan, Administratrix of the Estate of Owen J. Sandoz, prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit and that, after due proceedings had, the judgment of that Court may be reviewed and reversed, to the end that petitioner's claim for damages shall be reinstated and remanded to the District Court for trial on its merits.

Respectfully submitted.

RAYMOND H. KIERR
1740 National Bank of
Commerce Bldg.
New Orleans, Louisiana

Of Counsel:
Kierr and Gainsburgh
Eldon E. Fallon

CERTIFICATE OF SERVICE

I, Raymond H. Kierr, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have this day served upon the respondent herein a copy of the attached application for certiorari with its appendices, by depositing the same in the United States mails, postage prepaid at New Orleans, Louisiana addressed to George Denegre Esq. and Donald L. King Esq., 210 Baronne Street, New Orleans 12, Louisiana, this 22nd day of October, 1963.

Raymond H. Kierr.

APPENDIX A

HEARING ON MOTION OF PLAINTIFF TO RECONSIDER DEFENDANT'S MOTION FOR DISMISSAL AND TO VACATE JUDGMENT OF DISMISSAL

Filed: January 3, 1962

MINUTE ENTRY

December 27, 1961 JUDGE CHRISTENBERRY

This cause came on for hearing this day on motion of Plaintiff to reconsider Defendant's motion for dismissal and to vacate judgment of dismissal.

PRESENT: Raymond H. Kierr, Esq.,
Attorney for Plaintiff

Donald L. King, Esq.,
Attorney for Defendants

Argument:

IT IS ORDERED that the motion of Plaintiff to reconsider Defendant's motion for dismissal be, and the same is hereby GRANTED.

IT IS FURTHER ORDERED that the motion of Plaintiff to vacate Judgment of Dismissal be, and the same hereby, DENIED.

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19641

MRS. LYDIA SANDOZ HASSAN, Administratrix of the Estate of OWEN J. SANDOZ, Deceased,
Appellant,

versus

A. M. LANDRY & SON, INC., and THE TRAVELERS INSURANCE COMPANY,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(July 26, 1963.)

Before RIVES, LEWIS,* and BELL, Circuit Judges.

RIVES, Circuit Judge: This appeal is from a judgment sustaining the defendants' motion to dismiss or in the alternative for summary judgment. The complaint was filed by Mrs. Lydia Sandoz Hassan, as administratrix of her de-

* Of the Tenth Circuit, sitting by designation.

ceased son, Owen J. Sandoz, against A. M. Landry & Son, Inc., his employer at the time of his death, and its insurer Travelers. According to the complaint, the decedent lost his life on June 1, 1958 as the result of the crash landing of a helicopter in the Gulf of Mexico, while he was being transported to his vessel. The complaint was filed May 31, 1961, nearly three years from the date of decedent's death. It alleged that the decedent is survived by the plaintiff, his mother; by three minor children and their mother, his wife; and by two other minor children of the decedent's wife "with regard to whom decedent stood in *loco parentis*." It sought damages in the sum of $250,000.00 allegedly "under the Jones Act and also under the General Maritime Law and the Death on the High Seas Act, insofar as the latter are applicable."

By their motion to dismiss the defendants correctly pointed out: (1) that the General Maritime Law does not recognize an action for wrongful death;[1] (2) that any action under the Death on the High Seas Act is barred by the two-year statute of limitations.[2]

On appeal the plaintiff urges her claim solely as under the Jones Act, 46 U.S.C.A. §688, et seq. Under that Act and the provisions of the Federal Employers Liability Act,[3] which it adopts by reference, the recovery for the death of an employee is for the benefit of the surviving widow and children of the employee, if any, to the exclusion of his

[1] Lindgren v. United States, 1930, 281 U.S. 38; Metcalf v. The Alaska, 1889, 130 U.S. 201; Lewis v. Rickardo (The Harrisburg), 1886, 119 U.S. 199.

[2] 46 U.S.C.A. §763.

[3] 45 U.S.C.A. §51, et seq.

parents or other beneficiaries. 45 U.S.C.A §51, §59. *CB&Q R. Co. v. Wells-Dickey Trust Co., Administrator*, 275 U.S. 161, 163; *Wade, as Administratrix, v. Rogala*, 3 Cir. 1959, 270 F.2d 280. If the plaintiff as administratrix is entitled to recovery under the Jones Act, her recovery would not be on behalf of the estate but solely as trustee for the designated survivors, that is in this case, the widow and minor children. *Lindgren v. United States*, 1930, 281 U.S. 38.

The motion for summary judgment set up that the widow individually and as tutrix of the children had settled and compromised all claims for wrongful death by authority of a court judgment and had given a full and complete release to the defendants. Attached to the motion as exhibits were copies of the petition of the widow, as the duly qualified natural tutrix of the minor children, to the 27th Judicial District Court for the Parish of St. Landry, Louisiana, seeking authority to make a full and complete settlement. The widow waived any claims on her own behalf and the settlement was made on behalf of the minor children for the total sum of $46,960.00, allocated to the respective minors. Also attached to the motion for summary judgment was a copy of the judgment of said court approving the settlement and providing that upon receipt of the amount specified "A. M. Landry & Son, Inc. and Travelers Insurance Company be and they are hereby discharged from any and all further liability, responsibility and claims whatsoever which may or might be made against them as a result of the accident and death of the said Owen James Sandoz under the Compensation Laws of the State of Louisiana, the general tort laws of the State of Louisiana, or any other law whatsoever." Attached also was a release by the wid-

ow in the form of an authentic act under the laws of Louisiana.

There was further attached as an exhibit to the motion for summary judgment a copy of proceedings had on the same day, June 1, 1959, before the same court, in which the plaintiff in the present action, the mother of the decedent and the administratrix of his estate, joined the widow in petitioning the court to approve settlement on behalf of the minors and by the administratrix against various parties, not including the defendants in the present case, for any matters arising out of the injury to and death of Owen J. Sandoz, deceased, for the total sum of $50,000.00. Attached also was a copy of the judgment of that court approving the settlement and authorizing the execution of the release and also the release signed by the widow and natural tutrix of the minors and by Lydia Sandoz Hassan, individually and as administratrix of the Estate of Owen J. Sandoz.

It thus clearly appears that, with the active cooperation of the present plaintiff, the widow of the decedent, individually and as tutrix of his minor children, with court approval, has settled, or at least attempted to settle, any claim for his wrongful death which might have existed under the Jones Act. *Civil v. Waterman SS Corp.*, 2 Cir. 1954, 217 F.2d 94; *Larry v. Chicago, B&Q R. Co.*, E.D. Mo., 1947, 74 F.Supp. 798.

The only question remaining is the validity of that settlement. The exhibits attached to the motion to dismiss disclose that Zurich Insurance Company, as the insurer of Humble Oil Company, had agreed to pay to the minor chil-

dren of the decedent $50,000.00, and provided that Travelers Insurance Company and A. M. Landry & Sons, Inc., were entitled to receive, by way of subrogation, out of said $50,000.00, the amounts paid by them to said minor children, and further that, in addition to the amount reimbursed by Zurich's insurance, Travelers was paying a total of $1,960.00. The Louisiana Court in approving the settlement ordered: "that all of the amounts paid to the said minors as hereinabove set forth out of the money paid by Zurich Insurance Company, as the insurer of Humble Oil Company, is hereby credited to the amount due by Travelers Insurance Company as set forth in the compromise settlement presented herein . . . ." The plaintiffs introduced no evidence to show that this was error or that Travelers was not so entitled to be subrogated.

The exhibits further disclosed that the three minor children of the decedent and his wife were born out of wedlock, and that the two other minor children of the wife "with regard to whom decedent stood in *loco parentis*" were born of a previous marriage "subsequently" terminated by divorce. Those facts appear to us immaterial because illegitimate children qualify as beneficiaries under the Jones Act. *Civil v. Waterman SS Corp., supra*, 217 F.2d 98.

The validity of the settlement is not attacked as fraudulent or in any other way except in the particulars which have been mentioned. The settlement having been fully and explicitly described to the Louisiana court and having received that court's approval, we think that it meets even the careful scrutiny to which settlements and releases under the Jones Act must be subjected. See *Garrett v. Moore-McCormack Co.*, 1942, 317 U.S. 239, 248.

The defendants sustained their burden of showing the absence of any genuine issue as to the material facts, and no countervailing evidence having been offered by the plaintiff, summary judgment was properly entered: See 6 Moore's Federal Practice, §56.15(3), p. 2129. The judgment is

AFFIRMED.

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IN THE

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No. 577

MRS LYDIA SANDOZ HASSAN, Administratrix of the Estate of Owen J. Sandoz,

Petitioner,

versus

A. M. LANDRY & SON, INC., and THE TRAVELERS INSURANCE CO.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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IN THE

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No. ——

MRS LYDIA SANDOZ HASSAN, Administratrix of the Estate of Owen J. Sandoz,

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A. M. LANDRY & SON, INC., and
THE TRAVELERS INSURANCE CO.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Respondents pray that the application for a writ of certiorari to review the decision of the Circuit Court of Appeals for the Fifth Circuit, entered on July 26, 1963, be denied.

OPINIONS BELOW.

District Judge J. Skelly Wright by minute entry dated November 6, 1961, granted the motion of respondents

to dismiss and alternatively for summary judgment. (R. p. 22; Appendix "A.") On November 15, 1961, judgment was entered in favor of respondents and against the plaintiff. (R. pp. 22, 23; Appendix "B.") District Judge Herbert W. Christenberry by minute entry dated December 27, 1961, granted a motion to reconsider the judgment, but denied a motion to vacate the judgment of dismissal. (R. p. 30; Appendix "C.") An appeal was taken from this judgment by petitioner, and the case was unanimously affirmed by the Court of Appeals for the Fifth Circuit, and reported in 321 F. (2d) 570 (5th Cir. 1963), which opinion is set out in full in Appendix "B" of petitioner's brief.

QUESTION PRESENTED.

The sole question presented is: May petitioner as personal representative file suit on behalf of beneficiaries, when the claims of all beneficiaries have been settled and compromised, in a settlement which was approved by a Court of competent jurisdiction, and was consummated by the duly qualified representative of the beneficiaries with the active cooperation of the petitioner.

STATEMENT OF THE CASE.

This case represents a claim by a party to an overall settlement agreement, seeking to assert rights on behalf of certain beneficiaries, which rights have already been released by the same beneficiaries for a total consideration of $46,960.00.

Owen J. Sandoz died in a helicopter accident in the Gulf of Mexico on June 1, 1958. The mother of the minor

children of the deceased, who was the duly appointed and qualified tutrix and guardian, after obtaining Court approval, settled her claim individually and on behalf of the minor children with respondents A. M. Landry & Son, Inc., and The Travelers Insurance Company, and respondents were given a full and complete release. The grandmother of the children, petitioner herein, filed suit on May 31, 1961, for the benefit of the mother of the children, individually, and for the benefit of the minor children, against the defendants, respondents herein, A. M. Landry & Son, Inc., and The Travelers Insurance Company.

Defendants-appellees A. M. Landry & Son, Inc., and The Travelers Insurance Company moved for dismissal and alternatively for summary judgment. (R. pp. 4, 5.) Hearing on this motion was held on October 18, 1961, and after argument of counsel, counsel for plaintiff was given ten days to file additional evidence. (R. pp. 21, 22.) No evidence was filed by counsel for the plaintiff. By minute entry dated November 6, 1961, District Judge J. Skelly Wright granted the motion of defendants-appellees to dismiss and alternatively for summary judgment, citing as authority the case of *Civil v. Waterman Steamship Corporation*, 2 Cir., 217 Fed. (2d) 94. (R. p. 22; Appendix "A.") On November 15, 1961, judgment was entered in favor of defendants-appellees and against the plaintiff, rejecting her demands and dismissing her suit with costs. (R. pp. 22, 23; Appendix "B.")

Counsel for the plaintiff filed a motion to recall and vacate judgment of dismissal, requesting that the dismissal be reconsidered and vacated. (R. p. 23.) Between the time of filing and hearing of said motion, the

case was reallotted to District Judge Herbert W. Christenberry. Hearing on this motion was held before Judge Christenberry, and after argument of counsel, the Court granted the motion to reconsider the judgment of dismissal, and denied the motion to vacate the judgment of dismissal. A minute entry dated December 27, 1961, was entered to that effect. (R. p. 30; Appendix "C.") Plaintiff-appellant then filed a notice of appeal from this judgment and order dismissing the case. (R. p. 31.)

After argument, the Court of Appeals for the Fifth Circuit unanimously affirmed the judgment of the lower Court dismissing the suit of petitioner. No petition for rehearing was filed by petitioner.

REASON FOR DENYING THE WRIT.

The only reason petitioner advances in support of the granting of the writ is that it is claimed that the decision of the Court of Appeals for the Fifth Circuit violates the letter and spirit of the Jones Act, 46 U. S. C. 688. The reason advanced is inadequate, insufficient, and incorrect. Furthermore, there has been no showing whatsoever of special and important reasons sufficient for this Honorable Court to exercise its discretion and grant the writ requested by petitioner.

The decision in this case in no way violates either the letter or spirit of the Jones Act, but, on the other hand, is in conformity with the Act. The Jones Act, 46 U. S. C. 688, provides that in case of death, ". . . the personal representative of such seaman may maintain an action for damages . . ." This means only that the per-

sonal representative is to file suit, but this does not state or mean that only the personal representative may settle the claim before institution of suit. In the instant proceedings, the Court of Appeals for the Fifth Circuit correctly recognized a settlement by all beneficiaries, which settlement received state court approval, and which settlement was effected two years before the nonbeneficiary petitioner filed suit. The party who settled all claims pursuant to court authority and approval was in a "fiduciary" relationship to the other beneficiaries, as she was the duly qualified, authorized, and empowered tutrix and guardian of the minor children.

In support of the foregoing, and clearly illustrating that neither the letter nor spirit of the Jones Act was violated, is the case of *Larry v. Chicago B. & Q. R. Co.*, 74 Fed. Supp. 798 (U. S. D. C., E. D. Mo., 1947), which is a case under the Federal Employers' Liability Act, 45 U. S. C. 51, *et seq.*, which Act the Jones Act adopts by reference. This case involved a widow, who was the sole heir, who filed suit under the Federal Employers' Liability Act as personal representative against the employer of the deceased. The defendant alleged in its defense that the claim, prior to the filing of the suit, was settled in full with the widow. It was strongly contended by the plaintiff widow, personal representative, that the right of action rests exclusively in the personal representative, that the personal representative only can assert such right of action and, therefore, only the personal representative can settle and discharge the right of action. The Court rejected this contention and held that the settlement by the beneficiary was a defense to the action. The Court said on page 800 of the opinion:

"See also McKeigue v. Chicago & North Western R. R. Co., 130 Wis. 543, 110 N. W. 384, Loc. cit. 385, 11 L.R.A., N.S., 148, 118 Am. St. Rep. 1038 10 Ann. Cas. 554). 'A release, compromise and settlement of the claim by the beneficiaries entitled to the proceeds of a recovery will bar a subsequent action by them or for their benefit.' 17 C. J. p. 1247, 'Death'; See also 25 C. J. S. 'Death,' Sec. 47 (c).

"For authorities from State courts which support a plea of settlement as a valid defense under the circumstances presented by the record in this case see: Kennedy v. Davis, 171 Ala. 609, 55 So. 104, Ann. Cas. 1913B, 225; Guldager v. Rockwell, 14 Colo. 459, 24 P. 556; Gipe v. Pittsburgh, C. C. & St. L. Ry. Co., 41 Ind. App. 156, 82 N. E. 471; Christie v. Chicago, R. I. & P. R. Co., 104, 133 Tenn., 217, 180 S. W. 163; McKeigue Iowa, 707, 74 N. W. 697; Doyle v. New York, O & W. R. Co., 66 N. Y. 398, 72 N.Y.S. 936; Spitzer v. Knoxville Iron Co. v. Chicago & N. W. R. Co., 130 Wis. 543, 110 N. W. 384, 11 L.R.A., N. S., 148, 118 Am. St. Rep. 1008; 10 Ann. Cas. 544; Wenholz v. New Amsterdam Casualty Co., La. App., 181 So. 222."

The Court further held, and constituting a sound legal basis for the decision independent of the above, that if the plaintiff would collect for a claim the beneficiary had previously settled, the defendant would have a right of action against the beneficiary to recover the amount of the settlement.

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ERNEST A. CARRERE, JR.,
225 Baronne Street,
New Orleans, La.,
Counsel for Respondent.

Of Counsel:
JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE,
GEORGE DENEGRE,
DONALD L. KING.

CERTIFICATE.

I hereby certify that a copy of the foregoing brief has been served upon opposing counsel of record by placing same in the United States mail with adequate postage affixed thereto.

APPENDIX "A."

ORDER GRANTING MOTION OF DEFENDANTS TO DISMISS AND, ALTERNATIVELY FOR SUMMARY JUDGMENT

Filed: November 14, 1961

MINUTE ENTRY

November 6, 1961 Judge Wright

This cause came on for hearing at a former day, on the motion of the defendants to dismiss and alternatively for summary judgment, and after hearing argument of counsel for the respective parties, the matter was taken under advisement by the Court.

Whereupon, and upon due consideration thereof:

IT IS ORDERED by the Court that the motion of the defendants, to dismiss and alternatively for summary judgment, be, and the same is hereby, GRANTED.

AUTHORITY

Civil v. Waterman Steamship Corp., 2 Cir., 217 F. (2d) 94.

APPENDIX "B."

JUDGMENT

(Filed: Nov. 17, 1961)

This cause having been heard at a former day on the motion of the Defendants to dismiss and alternatively for Summary Judgment, and the Court after due consideration thereof having GRANTED said motion.

IT IS ORDERED, ADJUDGED AND DECREED that judgment be, and is hereby, entered in favor of the Defendants, A. M. Landry & Sons, Inc., and The Travelers Insurance Company and against the plaintiff, Mrs. Lydia Sandoz Hassan, Administratrix of the Estate of Owen J. Sandoz, deceased, rejecting the demands of said plaintiff and dismissing her suit with costs.

November 15, 1961.

APPENDIX "C."

HEARING ON MOTION OF PLAINTIFF TO RECONSIDER DEFENDANT'S MOTION FOR DISMISSAL AND TO VACATE JUDGMENT OF DISMISSAL

(Filed: Jan. 3, 1962)

MINUTE ENTRY December 27, 1961

JUDGE CHRISTENBERRY

This cause came on for hearing this day on motion of Plaintiff to reconsider Defendant's motion for dismissal and to vacate judgment of dismissal.

PRESENT: Raymond H. Kierr, Esq.,
Attorney for Plaintiff

Donald L. King, Esq.,
Attorney for Defendants

Argument.

IT IS ORDERED that the motion of plaintiff to reconsider Defendant's motion for dismissal be, and the same is hereby, GRANTED.

IT IS FURTHER ORDERED that the motion of Plaintiff to vacate judgment of Dismissal be, and the same hereby, DENIED.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of The United States

No. 577

MRS. LYDIA SANDOZ HASSAN, Administratrix of the Estate of Owen J. Sandoz,

Petitioner,

versus

A. M. LANDRY & SONS, INC. and THE TRAVELERS INS. CO.,

Respondent.

On Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY BRIEF

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IN THE
SUPREME COURT OF THE UNITED STATES

No. 577

MRS. LYDIA SANDOZ HASSAN, Administratrix of the Estate of Owen J. Sandoz,

Petitioner,

versus

A. M. LANDRY & SONS, INC. and THE TRAVELERS INS. CO.,

Respondent.

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MAY IT PLEASE THE COURT:

Most of the arguments contained in respondents' brief have been traversed in petitioner's original brief. Several of respondents' allegations, however, require supplemental comment.

I.

INCONSISTENCY IN RESPONDENTS' ARGUMENT

Respondents in their brief in opposition to certiorari agree with the proposition that the Jones Act provides that the

decedent's personal representative, the administrator, is the only party qualified to file suit under the Act for wrongful death. Nevertheless, respondents take the position that the Act allows someone other than the administrator to settle a claim under the act and terminate the entire matter. We submit that these propositions are inconsistent.

If someone other than the party specifically designated to file suit is allowed to settle the matter and terminate the proceeding, the power and authority of the party designated to file and prosecute the suit would be destroyed and the specific designation of the administrator as the proper party in a Jones Act proceeding would be rendered meaningless. The express words of the Jones Act designating the administrator as the only party to file suit for wrongful death can only be effectuated if that party is the only one capable of terminating the matter either by the successful prosecution of the suit or by settlement.

II.

POLICY BEHIND DESIGNATION OF ADMINISTRATOR AS PROPER PARTY IN JONES ACT PROCEEDINGS

Congress in selecting the Administrator as the only proper party to file suit under the Jones Act of course had reason for selecting that party rather than another representative. This reason we submit was that the Administrator is required to file a bond and is held to a high standard of trust.

A different representative such as a minor's guardian may be in a different position. In Louisiana such guardian

or natural tutor is not required to file a bond. The natural tutor instead may file a certificate setting forth the total value of the minor's property. Although this certificate serves as a mortgage on the property of the natural tutor and is a form of security, this security device is not as satisfactory in Jones Act proceedings as a bond, the security device required of an administrator.

A legal mortgage lacks the stability and certainty of a bond and may be superseded by other liens or the property may be destroyed. For these reasons we submit Congress designated the administrator rather than a natural tutor or any other representative as the proper party to bring suit under the Jones Act. For the same reasons no one but the administrator should be allowed to terminate such a proceeding by a settlement.

III.

CASE CITED BY RESPONDENTS NOT APPLICABLE

In support of their opposition to the petitioner for certiorari the Respondents cite *Larry* v. *Chicago B. & Q. R. Co.*, 74 F.S. 798 (E.D. Mo. 1947). In this case a widow and only heir of the decedent settled a claim for the wrongful death of her husband and then subsequently brought an action under the Jones Act as administratrix. The district court dismissed her suit under the Jones Act because the beneficiary and administratrix were one and the same person.

Such a situation does not exist here. In the instant case the person who allegedly settled the claim and the administratrix are not one and the same person. Moreover, the

person who allegedly settled the claim is a common law wife and thus may not even be an heir or beneficiary within the purview of the Jones Act. See Footnote 1, Page 6 of Petitioner's brief for certiorari. In addition, the common law wife in this case has children from a former marriage. Such a situation may make it difficult for her to distribute the funds for the exclusive benefit of the children of the decedent. In the instant case a person who could not file suit and who may not even be a beneficiary settled a claim for wrongful death arising under the Jones Act.' We submit the case cited by respondents does not sanction such a practice.

IV.

DECISION IN INSTANT CASE WILL AFFECT OTHER CASES

In their brief in opposition to the petition for certiorari the Respondents state that there are no "special or important reasons" for the Supreme Court to grant certiorari in this case. We submit that there are special and important reasons for granting certiorari in this case.

The question raised in the instant case is: who are the proper parties to terminate cases under the Jones Act by settlement and grant releases for death claims arising under this Act. This question is not peculiar to the instant case. It is presented in every case arising under the Jones Act. It is a question which has not as yet been passed on by this Honorable Court and one of grave importance.

V.

CONCLUSION

For the foregoing reasons, petitioner Mrs. Lydia Sandoz Hassan, Administratrix of the Estate of Owen J. Sandoz, prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit and that, after due proceedings had, the judgment of that Court may be reviewed and reversed to the end that petitioner's claim for damages shall be reinstated and remanded to the District Court for trial on its merits.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Raymond H. Kierr, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have this day served upon the respondent herein a copy of the attached application for certiorari with its appendices, by depositing the same in the United States mails, postage prepaid at New Orleans, Louisiana, addressed to George Denegre, Esq., and Donald L. King, Esq., 210 Baronne Street, New Orleans 12, Louisiana, this _____ day of _____, 196__.

_____

RAYMOND H. KIERR

FOOTNOTE CITED ON PAGE 4

[1]Only $1,960 of the funds which the common law wife received was paid by the Respondents in this proceeding. The remainder, approximately $45,000 was a payment by other parties under a Guest Voluntary Settlement Endorsement insurance agreement.

The Respondents are now attempting to utilize this purported settlement in an inadequate amount signed by an ineligible party who is not a beneficiary to permit them to escape from their responsibility under the Jones Act.